

IN THE MATTER OF : BEFORE THE  
VERIZON WIRELESS : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BOA Case No. 09-020V

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**DECISION AND ORDER**

On July 13, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Verizon Wireless for variances to reduce the 50-foot setbacks to 30.40 feet and 37 feet for a wireless antenna generator to be located in an R-20 (Residential: Single: Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

George Walker and Antoinette Kostoulis, the property owner, testified in favor of the petition. No one testified in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The 14,984-square foot, extremely wide and somewhat shallow, generally rectangular property is located on the southwest corner of the Old Hunt Club Road intersection with Montgomery Road and is known as 6840 Montgomery Road (the "Property"). The Property lies in the 1<sup>st</sup> Election District and is identified on Tax Map 38, Grid 1, as Parcel 672.

2. The Property frontage along Old Hunt Club Road is about 147 wide. The northern, Montgomery Road side lot line is about 78 feet deep, the south lot line, about 75 feet deep, and the rear lot line, about 200 feet wide.

3. The Property is improved by a two-story, wood frame dwelling situated in the Property's southern section and fronting on Old Hunt Club Road. A driveway accessed from Old Hunt Club Road and located to the dwelling's south side provides access.

4. The property is subject to a 50-foot side setback from Montgomery Road and a 50-foot front setback from Old Hunt Club Road. The front section is also subject to a Baltimore Gas and Electric ("BGE") Company easement.

5. Situated within the BGE easement area in the northeast corner of the Property are an 89-foot high BGE transmission tower and a Verizon Wireless communications antenna extending 16 feet in height above the transmission tower.

6. Vicinal Properties. Adjacent properties are also zoned R-20 and are each improved with a single-family detached dwelling.

7. The Petitioner, the property owner, is requesting variances to reduce the 50-foot side setback to 37 feet and the 50-foot front setback to 30.4 feet for a Verizon Wireless generator. According to the Variance Plan, the generator would be situated within the existing wireless compound, surrounded by a gravel area, and enclosed by a five-foot high chain link fence. When Verizon Wireless employees must gain access to the generator, they would continue to use the existing access off Old Hunt Club Road. The petition also states the Petitioner is willing to provide landscaping.

8. Mr. Walker testified that the existing communications tower is a permitted use under Section 128.4 of the Howard County Zoning Regulations and that Verizon Wireless had received a County permit for the antenna.

9. Mr. Walker further testified the property is unique because shape of the Property causes the two 50-foot setbacks to render most of the property unusable without a variance. He also stated the generator would be sited at the closest point possible to the antenna.

### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance for the addition complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

1. In this case, the Property is wide and shallow. Additionally, while existing structures may not be considered "unique" features of a property, the existing transmission tower and antenna are situated within the required setbacks. Moreover, the combined effect of the two 50-foot setbacks renders most of the Property unusable without a variance. Consequently, I conclude the Property's shape, the impact of the setbacks, and the location of the existing transmission tower and antenna dwelling are unique physical conditions causing the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The generator will be used for a permitted purpose and will not change the nature or intensity of use. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or

development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulties in complying strictly with the setback regulations arise from the Property's shape and the impact of the setbacks on the Property and were not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The generator is a reasonable size and will be located close to the antenna. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

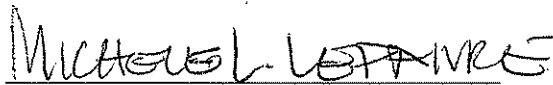
Based upon the foregoing, it is this 17<sup>th</sup> Day of July 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Verizon Wireless for variances to reduce the 50-foot setbacks to 30.4 feet and 37 feet for a wireless antenna generator in an R-20 Zoning District is **GRANTED;**

**Provided, however, that:**

1. The variances shall apply only to the generator as described in the petition submitted and not to any activities, uses, structures, or additions on the Property.
2. The Petitioner shall install a Type C landscaping buffer along the Montgomery Road property line.
3. The Petitioners shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
**Michele L. LeFaivre**

**Date Mailed:** \_\_\_\_\_

7/22/09

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.